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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 485,421	10-05-2000	Sundarasamy Mahalingam	UPAP-0350	1903

7590 07-24-2002

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EXAMINER

LI, QIAN J

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 07/24/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/485,421

Applicant(s)

MAHALINGAM ET AL.

Examiner

Q. Janice Li

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-11.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): the first paragraph of 35 U.S.C. 112, because the amendment to the claims canceled the rejected subject matter. .

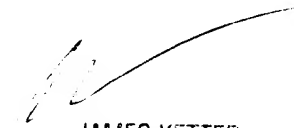
Continuation of 5. does NOT place the application in condition for allowance because:

Claims 1, 3, 5-11 stand rejected under 35 U.S.C. 102(b) as being anticipated by WO9608970.

Applicants argue that none of the fragments reported in the Weiner reference are the fragments comprising amino acid residues 17-36 and/or 59-84 of Vpr protein, and that the specification teaches that a fragment refers to proteins that are not complete Vpr proteins. The argument has been carefully considered but found not persuasive because WO9608970 teaches, in page 36, lines 29-30, that nucleic acid molecules are conjugated to "a Vpr protein or its fragment", which does not place any limitation on the length of the Vpr fragment, and embraces a vpr fragment of 95 amino acid residues comprising residues 17-36 and/or 59-84 of Vpr protein as instantly claimed. In comparison, the instant claims also embrace a Vpr fragment of any length, as long as it comprising the instantly recited fragments, which clearly overlaps with the cited teaching. Therefore, the fragments recited in claims 1 and 7 encompass the cited teaching, thus, WO9608970 anticipates the instant claims.

In the argument, applicants further state, "the term 'comprising' relates to other component of the RNA that do not involve the overall number of nucleotides in the sequence" (3rd paragraph on page 3), it is unclear what RNA the applicants are referring to, the claims are drawn to amino acid sequences, not RNA.

Claims 1-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO9608970 as applied to claims 1, 3, 5-11 above, and further in view of Katz et al (US 6,005,004) or Kayyem et al (US 6,232,295) for the reason of record and set forth above, and the rejection would stand or fall together with the rejection under Section 35 U.S.C. 102.



JAMES KETTER
PRIMARY EXAMINER